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12 Attorneys for Plaintiff,
13 Neal Fultz

14 UNITED STATES DISTRICT COURT
15 CENTRAL DISTRICT OF CALIFORNIA
16 WESTERN DIVISION

17 Neal Fultz,

18 Plaintiff,

19 vs.

20 Ad Astra Recovery Services, Inc.; and
21 DOES 1-10, inclusive,

22 Defendants.
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Case No.:

CV13-08084-SS

COMPLAINT FOR DAMAGES
1. VIOLATION OF FAIR DEBT
COLLECTION PRACTICES ACT,
15 U.S.C. § 1692 *ET. SEQ.*;
2. VIOLATION OF FAIR DEBT
COLLECTION PRATICES ACT,
CAL.CIV.CODE § 1788 *ET. SEQ.*
3. VIOLATION OF TELEPHONE
CONSUMER PROTECTION ACT 47
U.S.C. § 227 *ET. SEQ.*

JURY TRIAL DEMANDED

COMPLAINT FOR DAMAGES

2013 NOV - 1 AM 11:55
CLERK U.S. DISTRICT COURT
CENTRAL DIST. OF CALIF.
LOS ANGELES
BY _____

FILED

1 For this Complaint, the Plaintiff, Neal Fultz, by undersigned counsel, states as
2 follows:
3

4 **JURISDICTION**

5 1. This action arises out of Defendants' repeated violations of the Fair Debt
6 Collection Practices Act, 15 U.S.C. § 1692, *et seq.* ("FDCPA"), violations of the
7 Telephone Consumer Protection Act, 47 U.S.C. § 227, *et. seq.* ("TCPA"), and the
8 invasions of Plaintiff's personal privacy by the Defendants and its agents in their
9 illegal efforts to collect a consumer debt.
10

11 2. Supplemental jurisdiction exists pursuant to 28 U.S.C. § 1367.
12

13 3. Venue is proper in this District pursuant to 28 U.S.C. § 1391(b), in that
14 Defendants transact business here and a substantial portion of the acts giving rise to
15 this action occurred here.
16

17 **PARTIES**

18 4. The Plaintiff, Neal Fultz (hereafter "Plaintiff"), is an adult individual
19 residing in Los Angeles, California, and is a "consumer" as the term is defined by 15
20 U.S.C. § 1692a(3) and is a "person" as defined by 47 U.S.C. § 153(10).
21

22 5. Defendant, Ad Astra Recovery Services, Inc. ("Ad Astra"), is a Kansas
23 business entity with an address of 3607 North Ridge Road, Suite 106, Wichita, Kansas
24 67205, operating as a collection agency, and is a "debt collector" as the term is
25 defined by 15 U.S.C. § 1692a(6) and is a "person" as defined by 47 U.S.C. § 153(10).
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1 6. Does 1-10 (the “Collectors”) are individual collectors employed by Ad
2 Astra and whose identities are currently unknown to the Plaintiff. One or more of the
3 Collectors may be joined as parties once their identities are disclosed through
4 discovery.
5

6 7. Ad Astra at all times acted by and through one or more of the Collectors.
7

8 **ALLEGATIONS APPLICABLE TO ALL COUNTS**

9 **A. The Debt**

10 8. A financial obligation (the “Debt”) was allegedly incurred to an original
11 creditor (the “Creditor”).
12

13 9. The Debt arose from services provided by the Creditor which were
14 primarily for family, personal or household purposes and which meets the definition
15 of a “debt” under 15 U.S.C. § 1692a(5).
16

17 10. The Debt was purchased, assigned or transferred to Ad Astra for
18 collection, or Ad Astra was employed by the Creditor to collect the Debt.
19

20 11. The Defendants attempted to collect the Debt and, as such, engaged in
21 “communications” as defined in 15 U.S.C. § 1692a(2).
22

23 **B. The Facts**

24 12. Within the last year, Ad Astra contacted Plaintiff in an attempt to collect
25 the Debt from a person other than Plaintiff (the “Debtor”).
26
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1 13. During all times mentioned herein, Ad Astra called Plaintiff on his
2 cellular telephone using an automatic telephone dialing system (“ATDS”) and/or by
3 using a prerecorded or artificial message on a cellular telephone
4

5 14. Ad Astra used an automated voice when placing calls to Plaintiff
6 indicating it was attempting to reach the Debtor.
7

8 15. Plaintiff does not know the Debtor and is no way responsible for the
9 repayment of the Debt.

10 16. On multiple occasions, Plaintiff answered Ad Astra’s calls and followed
11 an automated prompt in an attempt to get the calls to stop. During each live
12 conversation, Plaintiff informed Ad Astra that it was calling his personal cellular
13 telephone and that the Debtor was unknown to him and unreachable at his telephone
14 number.
15
16

17 17. Each time, Plaintiff instructed Ad Astra to remove his telephone number
18 from the account and cease all communications with him.
19

20 18. However, despite knowing the Debtor could not be reached at Plaintiff’s
21 number and ignoring Plaintiff’s multiple attempts to stop the calls, Ad Astra continued
22 calling Plaintiff in an attempt to collect the Debt at an annoying and harassing rate,
23 placing up to two calls to his cellular telephone per day, several days a week for
24 successive weeks.
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COUNT I
VIOLATIONS OF THE FAIR DEBT COLLECTION PRACTICES ACT
15 U.S.C. § 1692, et seq.

19. The Plaintiff incorporates by reference all of the above paragraphs of this Complaint as though fully stated herein.

20. The Defendants engaged in behavior the natural consequence of which was to harass, oppress, or abuse the Plaintiff in connection with the collection of a debt, in violation of 15 U.S.C. § 1692d.

21. The Defendants caused a phone to ring repeatedly and engaged the Plaintiff in telephone conversations, with the intent to annoy and harass, in violation of 15 U.S.C. § 1692d(5).

22. The Defendants used unfair and unconscionable means to collect a debt, in violation of 15 U.S.C. § 1692f.

23. The foregoing acts and omissions of the Defendants constitute numerous and multiple violations of the FDCPA, including every one of the above-cited provisions.

24. The Plaintiff is entitled to damages as a result of the Defendants' violations.

COUNT II
VIOLATION OF THE ROSENTHAL FAIR DEBT COLLECTION
PRACTICES ACT, Cal. Civ. Code § 1788 *et seq.*

25. The Plaintiff incorporates by reference all of the above paragraphs of this Complaint as though fully stated herein.

26. The Rosenthal Fair Debt Collection Practices Act, California Civil Code section 1788 *et seq.* (“Rosenthal Act”) prohibits unfair and deceptive acts and practices in the collection of consumer debts.

27. Ad Astra Recovery Services, Inc., in the regular course of business, engages in debt collection and is a “debt collector” as defined by Cal. Civ. Code § 1788.2(c).

28. The Defendants caused a telephone to ring repeatedly and engaged the Plaintiff in continuous conversations with an intent to annoy the Plaintiff, in violation of Cal. Civ. Code § 1788.11(d).

29. The Defendants communicated with the Plaintiff with such frequency as to be considered harassment, in violation of Cal. Civ. Code § 1788.11(e).

30. The Defendants failed to comply with the provisions of 15 U.S.C. § 1692, *et seq.*, in violation of Cal. Civ. Code § 1788.13(e).

31. The Defendants did not comply with the provisions of Title 15, Section 1692 of the United States Code, in violation of Cal. Civ. Code § 1788.17.

39. The calls from Ad Astra to Plaintiff were not placed for “emergency purposes” as defined by 47 U.S.C. § 227(b)(1)(A)(i).

40. Ad Astra's telephone system has the capacity to store numbers in a random and sequential manner.

41. As a result of each call made in negligent violation of the TCPA, Plaintiff is entitled to an award of \$500.00 in statutory damages for each call in violation of the TCPA pursuant to 47 U.S.C. § 227(b)(3)(B).

42. As a result of each call made in knowing and/or willful violation of the TCPA, Plaintiff is entitled to an award of treble damages in an amount up to \$1,500.00 pursuant to 47 U.S.C. § 227(b)(3)(B) and 47 U.S.C. § 227(b)(3)(C).

COUNT IV
INVASION OF PRIVACY BY INTRUSION UPON SECLUSION

43. The Plaintiff incorporates by reference all of the above paragraphs of this Complaint as though fully stated herein.

44. The Restatement of Torts, Second, § 652B defines intrusion upon seclusion as, “One who intentionally intrudes...upon the solitude or seclusion of another, or his private affairs or concerns, is subject to liability to the other for invasion of privacy, if the intrusion would be highly offensive to a reasonable person.”

45. California further recognizes the Plaintiff's right to be free from invasions of privacy, thus the Defendants violated California state law.

- 1 B. Statutory damages of \$1,000.00 pursuant to 15 U.S.C. §1692k(a)(2)(A)
2 against the Defendants;
3
4 C. Costs of litigation and reasonable attorney's fees pursuant to 15 U.S.C.
5 § 1692k(a)(3) against the Defendants;
6
7 D. Actual damages pursuant to Cal. Civ. Code § 1788.30(a);
8
9 E. Statutory damages of \$1,000.00 for knowingly and willfully committing
10 violations pursuant to Cal. Civ. Code § 1788.30(b);
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12 F. Statutory damages pursuant to 47 U.S.C. § 227(b)(3)(B) & (C);
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14 G. Actual damages from the Defendants for the all damages including
15 emotional distress suffered as a result of the intentional, reckless, and/or
16 negligent FDCPA violations and intentional, reckless, and/or negligent
17 invasions of privacy in an amount to be determined at trial for the
18 Plaintiff;
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20 H. Punitive damages; and
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22 I. Such other and further relief as may be just and proper.

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TRIAL BY JURY DEMANDED ON ALL COUNTS

1 DATED: November 1, 2013

TAMMY HUSSIN

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4 By: _____

5 Tammy Hussin, Esq.

6 Lemberg & Associates, LLC

7 Attorney for Plaintiff, Neal Fultz

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UNITED STATES DISTRICT COURT
 CENTRAL DISTRICT OF CALIFORNIA

Neal Fultz

CASE NUMBER

PLAINTIFF

CV 13-08084 -SS

v.

Ad Astra Recovery Services, Inc.; and DOES 1-10,
 inclusive,

DEFENDANT(S).

SUMMONS

TO: DEFENDANT(S): Ad Astra Recovery Services, Inc.

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it), you must serve on the plaintiff an answer to the attached ☒ complaint ☐ amended complaint ☐ counterclaim ☐ cross-claim or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff's attorney, Tammy Hussin, Esq., Lemberg & Associates, LLC, whose address is 6404 Merlin Drive, Carlsbad, CA 92011. If you fail to do so, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

Clerk, U.S. District Court

Dated: NOV - 1 2013

By: Marilyn De...

Deputy Clerk

(Seal of the Court)



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[Use 60 days if the defendant is the United States or a United States agency, or is an officer or employee of the United States. Allowed 60 days by Rule 12(a)(3)].